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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** REFA International, Inc.

**File:** B-274849; B-275140

**Date:** January 7, 1997

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Joe Hardin for the protester.

John P. Patkus, Esq., Defense Logistics Agency, for the agency.

Marie Penny Ahearn, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that agency unreasonably delayed review of protester's application for qualified suppliers list (QSL) is denied where delay was related to agency's concerns (1) that there may be an identity between the protester and a contractor that had been debarred on the basis of lack of business integrity, and (2) whether the protester's products were traceable to a QSL manufacturer or supplier.

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### **DECISION**

REFA International, Inc. (REFA) protests the award of two purchase orders for class 3 threaded fasteners--to L & M Enterprises, Inc. under request for quotations (RFQ) No. SP0500-96-Q-KZ52, and to ASC Industries under RFQ No. SP0500-96-T-HJ08--issued by the Defense Industrial Supply Center (DISC), Defense Logistics Agency. REFA argues that DISC improperly denied the firm an opportunity to compete under the RFQs by failing promptly to consider the firm's request for approval as a qualified source for the screws.

We deny the protests.

DISC issued the RFQs on June 17 and August 30, 1996, respectively. Both RFQs provided that only manufacturers/suppliers on the qualified suppliers list (QSL) for class 3 threaded fasteners (which are used primarily for aerospace applications) would be eligible for award. DLA rejected REFA's low quotes on both RFQs because the firm was not on the QSL at the time of the awards. The agency made award to L & M under the first RFQ on September 14, and to ASC under the second RFQ on October 10, as the next low quoters on the QSL.

## BACKGROUND

REFA had submitted an initial application for the QSL (including a quality assurance (QA) manual), dated March 20, 1996. After review of the application, DISC determined that the firm was not in compliance with certain QSL criteria (as contained in the QSL Criteria and Provisions for Class 3 Threaded Fasteners, dated February 15, 1996), including requirements for (1) product traceability, *i.e.*, "[a] documented system . . . which unequivocally indicates that the distributor's products have been produced by a customer approved manufacturer"; (2) lot control and marking, *i.e.*, ensuring lot identification, segregation and traceability, and that product lots are not commingled; and (3) periodic review of the quality control manual to ensure procedures are kept current with ongoing operations and regulatory requirements. By letter dated May 2, the agency notified REFA of the specific areas of noncompliance and that its application would be held without action pending corrective action. REFA responded by submitting a revised QA manual with a letter dated May 22. The Defense Contract Management Command (DCMC) subsequently conducted (on June 11) an on-site survey of REFA, and generally concluded (in a report dated June 21) that REFA had "a system for adequately maintaining lot control and traceability." However, DISC determined that the survey report was inadequate because, notwithstanding DISC's specific request, DCMC had not verified that REFA complied with certain QSL criteria, including the requirements to assure product traceability to the manufacturer and lot control and marking with no commingling. DISC thus concluded that additional information was necessary.

### Identity

On July 18, DISC requested that DCMC delay a resurvey of REFA pending a determination as to whether quotes submitted in the name of REFA in fact were being submitted by a debarred contractor, M-F Services, Inc. In this regard, as noted by DCMC in its June survey report and in a prior January 1996 pre-award survey report, in 1995 REFA had purchased the inventory and other assets of M-F Services, which had been debarred for lack of business integrity after its president was convicted of conspiracy in connection with defrauding DISC on government contracts. DCMC noted that REFA's president previously had served as international sales manager for M-F Services, REFA's vice-president of finance had served as secretary-treasurer, and REFA's quality manager had worked in quality assurance at M-F Services. DISC's concern arose from the fact that it had received REFA quotes on M-F Services's letterhead.

After being advised of DISC's concern, REFA responded (by letter dated July 25) that while it had purchased the assets and certain liabilities of M-F Services, Inc. and the right to the name "M-F Services," it had not acquired "the name M-F Services, Inc. or its corporate entity." According to REFA, although it "operates with certain commercial and export customers under the name of M-F Services Division of REFA International, Inc.," the quotations on M-F Services's letterhead had been sent "in error."

### Traceability

DISC also was concerned that the origin of the supplies that would be furnished by REFA was not clear; that is, DISC was not confident that REFA's inventory of fasteners had been manufactured or supplied by QSL firms. By letter dated July 22, DISC advised REFA that any offers based on furnishing the M-F Services inventory would be considered technically unacceptable because "M-F Services' criminal conviction for defrauding the government makes its inventory suspect and inherently unreliable." REFA responded, by letter dated August 22, that the M-F Services inventory is "sound and reliable," and requested reversal of the determination that the M-F Services inventory was unacceptable. However, DISC responded (by letter dated September 10) that:

"DISC relies heavily on paperwork from its contractors; however, due to M-F Services' conviction, DISC does not believe that it can rely on any of its paperwork. Thus, if REFA wishes to furnish any supplies obtained from M-F Services' inventory, it has two alternatives:

"Obtain certifications which reflect traceability of the product to REFA vice M-F Services.

"Subject M-F Services's inventory to product verification testing at REFA's expense and provide DISC with the test results."

DISC's concern regarding REFA's inventory was increased by the results of a September 11 QSL resurvey performed by DISC, which disclosed that the M-F Services inventory was not kept separate from REFA's inventory and that a large portion of REFA's inventory was not traceable to a QSL manufacturer or supplier. By letter dated September 30, DISC advised REFA that the September 11 resurvey disclosed that the preponderance of REFA's inventory--apparently approximately 90 percent--consisted of "suspect and inherently unreliable material obtained from M-F Services," and that there was

a "breakdown of internal communication at REFA," as evidenced by the fact that REFA's quality control manager was unaware of the agency's July 22 letter to REFA concerning the unacceptability of the M-F Services inventory. Noting that the "QSL program is based on the integrity of material supplied by our providers and supported by appropriate traceability documentation as well as compliance with quality program criteria and operational parameters," DISC advised REFA that "it is inappropriate to consider your listing to the QSL until these more basic issues are satisfactorily resolved." The agency informed the protester that "[o]nce you have resolved these significant issues with Legal, in a manner that does not violate QSL criteria, we can pursue processing of your application."

REFA filed these protests with our Office on September 30 and October 16. Although DISC subsequently advised REFA by letter dated November 7 that the "outstanding legal impediments regarding REFA have been satisfactorily resolved," apparently referring to the issue with respect to the identity of the legal entity submitting quotes to the government, the agency maintained that certain "corrective actions are still outstanding and need to be addressed prior to further processing of your application." The agency advised REFA that since M-F Services was never approved for the QSL, inventory from that company could not be supplied under the QSL program. In this regard, DISC noted its finding that there was a lack of product traceability for a large portion of the inventory surveyed and that REFA's inventory was not segregated from the M-F Services inventory. The agency instructed REFA that the M-F Services inventory must be physically segregated from the remainder of the firm's inventory, by including separate shelving and storage in the warehouse area and separate inventory line cards and records. DISC noted again that REFA's quality control manager was not aware of the agency's July 22 letter to REFA notifying the firm that it was unacceptable to supply the M-F Services material under government contracts; the agency advised REFA that it "must take steps to ensure that such gross miscommunications within [the firm's] quality control process do not occur in the future." DISC advised REFA that, once it received and accepted the firm's documented corrective action on these matters, it would arrange for a resurvey of the firm's facility as the final step to attaining inclusion on the QSL.

## DISCUSSION

Under 10 U.S.C. § 2319 (1994), where an agency restricts contract award to only approved sources and imposes qualification requirements, unapproved sources must be given a reasonable opportunity to qualify. Saturn Indus., B-261954.3, Jan. 5, 1996, 96-1 CPD ¶ 9. In this regard, an agency imposing a

qualification requirement must act reasonably promptly to ensure that an offeror seeking qualification is promptly informed as to whether qualification has been obtained and, if not, promptly furnished specific information as to why qualification was not obtained. Rotair Indus., 69 Comp. Gen. 684 (1990), 90-2 CPD ¶ 154. An agency's technical determination concerning the qualifications of offerors must be reasonable. Precision Metal Prods., Inc., B-261680, Sept. 8, 1995, 95-2 CPD ¶ 105.

There is no evidence of any unreasonable material delay on the part of the agency in the processing of REFA's application for the QSL. Although REFA submitted its QSL application in March, the record shows that DISC had reasonable concerns--the identity of the offeror and traceability of the inventory--which led to the initial delay, and ultimate rejection (pending corrective action), of REFA's application, and that the agency kept REFA apprised of these concerns during its investigation of these matters.

In any case, the real issue here is not delay by DISC, but REFA's disagreement with DISC over whether its concerns regarding the firm's inventory are legitimate. In this regard, even after the issue created by REFA as to the identity of the quoter was resolved, REFA's treatment of the debarred contractor's inventory delayed, and has continued to delay, approval of REFA's QSL application. The agency's concerns are reasonable. It is indisputable that reliable documentation is essential to safeguarding the integrity of the QSL supply process. We think it is equally clear that M-F Services's legal problems--debarment for lack of business integrity in connection with a conspiracy to defraud the government--and lack of QSL status legitimately bring into question whether supplies from that firm's inventory reliably can be accepted as QSL products. As there was no evidence that those products definitely were furnished by QSL suppliers and manufacturers, there simply is no basis to object to DISC's position that M-F Services's inventory could not be supplied for QSL procurements (unless REFA first took the steps noted above), and that segregation of that inventory from the rest of REFA's inventory therefore was a necessary condition to obtaining qualification. When DISC raised this matter with REFA, however, the firm did not agree to comply with DISC's request, or otherwise cooperate with DISC to alleviate its concerns, but, rather, merely claimed that the M-F Services inventory is "sound and reliable," and requested that DISC reverse its position.

We conclude that it was reasonable for DISC to decline to approve REFA's QSL application when the firm's predominant source of inventory was from a non-QSL supplier whose documentation was reasonably viewed as unreliable

and the firm's remaining inventory had not been reliably demonstrated to be traceable to a QSL manufacturer.<sup>1</sup>

The protests are denied.

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<sup>1</sup>Although REFA (in its November 5 comments) generally disputes the findings of DISC's September 11 resurvey (reported to REFA by letter dated September 30) that the M-F Services inventory was not segregated from REFA's inventory and that a large amount of REFA's inventory was not traceable to a QSL manufacturer or supplier, there is no indication that REFA advised the agency prior to award of the purchase orders (on September 14 and October 10) of why it believed DISC's findings were in error, or of any corrective action taken to remedy the evaluated deficiencies.